

commercial purposes and \$300,000 for residential purposes—both of which would be permitted under its \$800,000 General Limitation—Savings Association A's remaining permissible lending to Y would be: first, an additional \$100,000 under the General Limitation, and then another \$800,000 to develop domestic residential housing units if the savings association meets the paragraph § 32.3(d)(2) prerequisites. (The latter is \$800,000 because in no event may the total lending to Y exceed 30 percent of unimpaired capital and unimpaired surplus). If Savings Association A did not lend Y the remaining \$100,000 permissible under the General Limitation, its permissible loans to develop domestic residential housing units under § 32.3(d)(2) would be \$900,000 instead of \$800,000 (the total loans to Y would still equal \$1,600,000).

3. In short, under the § 32.3(d)(2) exception, the 30 percent or \$30,000,000 limit will always operate as the uppermost limitation, unless the savings association does not avail itself of the exception and merely relies upon its General Limitation.

Section 2. Interrelationship Between the General Limitation and the 150 Percent Aggregate Limit on Loans to All Borrowers To Develop Domestic Residential Housing Units

Numerous questions have been received regarding the allocation of loans between the different lending limit “baskets,” i.e., the 15 percent General Limitation basket and the 30 percent Residential Development basket. In general, the inquiries concern the manner in which a savings association may “move” a loan from the General Limitation basket to the Residential Development basket. The following example is intended to provide guidance:

Example: Savings Association A's General Limitation under § 32.3(a) is \$15 million. In January, Savings Association A makes a \$10 million loan to Borrower to develop domestic residential housing units. At the time the loan was made, Savings Association A had not received approval under an order issued by the appropriate Federal banking agency to avail itself of the residential development exception to lending limits. Therefore, the \$10 million loan is made under Savings Association A's General Limitation.

2. In June, Savings Association A receives authorization to lend under the Residential Development exception. In July, Savings Association A lends \$3 million to Borrower to develop domestic residential housing units. In August, Borrower seeks an additional \$12 million commercial loan from Savings Association A. Savings Association A cannot make the loan to Borrower, however, because it already has an outstanding \$10 million loan to Borrower that counts against Savings Association A's General Limitation

of \$15 million. Thus, Savings Association A may lend only up to an additional \$5 million to Borrower under the General Limitation.

3. However, Savings Association A may be able to reallocate the \$10 million loan it made to Borrower in January to its Residential Development basket provided that: (1) Savings Association A has obtained authority under an order issued by the appropriate Federal banking agency to avail itself of the additional lending authority for residential development and maintains compliance with all prerequisites to such lending authority; (2) the original \$10 million loan made in January constitutes a loan to develop domestic residential housing units as defined; and (3) the housing unit(s) constructed with the funds from the January loan remain in a stage of “development” at the time Savings Association A reallocates the loan to the domestic residential housing basket. The project must be in a stage of acquisition, development, construction, rehabilitation, or conversion in order for the loan to be reallocated.

4. If Savings Association A is able to reallocate the \$10 million loan made to Borrower in January to its Residential Development basket, it may make the \$12 million commercial loan requested by Borrower in August. Once the January loan is reallocated to the Residential Development basket, however, the \$10 million loan counts towards Savings Association A's 150 percent aggregate limitation on loans to all borrowers under the residential development basket (§ 32.3(d)(2)).

5. If Savings Association A reallocates the January loan to its domestic residential housing basket and makes an additional \$12 million commercial loan to Borrower, Savings Association A's totals under the respective limitations would be: \$12 million under the General Limitation; and \$13 million under the Residential Development limitation. The full \$13 million residential development loan counts toward Savings Association A's aggregate 150 percent limitation.

[77 FR 37282, June 21, 2012]

PART 33 [RESERVED]

PART 34—REAL ESTATE LENDING AND APPRAISALS

Subpart A—General

Sec.

- 34.1 Purpose and scope.
- 34.2 Definitions.
- 34.3 General rule.
- 34.4 Applicability of state law.
- 34.5 Due-on-sale clauses.